

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 MARK ANTHONY JAEGAL, SR.; MARK
5 ANTHONY JAEGAL, JR., individually
6 and on behalf of all others
7 similarly situated,

8 Plaintiffs,

9 v.

10 COUNTY OF ALAMEDA, et al.,

11 Defendants.

No. C 09-0242 CW

ORDER GRANTING IN
PART DEFENDANTS'
MOTION TO AMEND
CLASS
CERTIFICATION
ORDER (Docket No.
57)

12 On January 22, 2010, the Court certified the following class,
13 pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2) for
14 injunctive and declaratory relief and (b)(3) for damages:

15 All pre-arraignment detainees who are or will be held
16 in Defendants' custody and who, because of such
17 detention, will be strip searched pursuant to Alameda
18 County Sheriff's Department custom, policy or
19 procedure without a reasonable suspicion based on
20 specific and articulable facts that the detainee
21 possessed a weapon or contraband that would be found
22 as a result of the strip search.

23 In doing so, the Court noted that the class definition
24 was subject to revision and decertification, if necessary.
25 Defendants move to amend the class definition. Docket
26 No. 57. Plaintiffs oppose the motion in part. The motion
27 was taken under submission on the papers. Having
28 considered all of the parties' arguments, the Court grants
Defendants' motion in part.

DISCUSSION

Defendants move to amend the class definition to clarify that (1) the term "strip search," for purposes of defining the class in this action, is limited to the search of a person who is completely unclothed, or whose genitals or female breasts are exposed to be viewed by the person or persons conducting the search, and (2) the class is limited to those who experienced such searches while in the intake/booking process.¹

Plaintiffs acknowledge that Bull v. City and County of San Francisco, 595 F.3d 964, 982 (9th Cir. 2010), found facially reasonable under the Fourth Amendment a jail policy that required unclothed visual inspection of all arrestees classified for custodial housing in the general population, notwithstanding the lack of individualized reasonable suspicion as to the individuals searched. Accordingly, Plaintiffs agree to limit the class to those who were strip searched, as Plaintiffs define that term,

¹ Defendants' original proposed amended class definition states,

All pre-arraignment detainees who are or will be held in Defendants' custody, but will not be transferred to the general inmate population, and who, because of such detention, are strip searched in a manner which requires that they remove all their clothing and expose their genitals, buttocks and, in the case of female detainees, breasts to be viewed by the person or persons conducting the search, pursuant to Alameda County Sheriff's Department custom, policy or procedure without reasonable suspicion based on specific and articulable facts that the detainee possessed a weapon or contraband that would be found as a result of the strip search. To qualify the [sic] as a member of the class, the detainee must have undergone the strip search, as described above, as part of the jail's routine booking process and while in the booking/intake area of the jail, and must not have been transferred to the general jail population.

1 pursuant to the challenged policy or custom, during the booking
2 process. However, Plaintiffs take issue with Defendants' original
3 proposed amended class definition because the last sentence
4 excludes those who were strip searched under the policy, but were
5 later transferred to the general jail population. In their reply,
6 Defendants agree that their proposed wording was unduly narrow in
7 this respect and propose a sentence that states, "To qualify as a
8 member of the class, the detainee must have undergone the strip
9 search, in the manner described above, as part of the jail's
10 routine booking process and while in the booking/intake area of
11 the jail." An amendment to limit the class to those who were
12 strip searched during the booking process is appropriate because
13 the prior class definition, approved before Bull, did not
14 distinguish between those detainees strip searched during the
15 booking process, and those strip searched as part of their
16 transfer to housing with the general inmate population.

17 On the other hand, Plaintiffs oppose limiting the class to
18 those who were searched while naked, thus excluding those who were
19 searched while wearing undershorts. The parties dispute whether
20 the definition of a strip search necessarily excludes searches of
21 those detainees wearing undershorts.

22 Plaintiffs contend that it is well established in the Ninth
23 Circuit that a strip search may occur while the person subject to
24 the search continues to wear underwear. Plaintiffs cite the
25 Supreme Court's reasoning in Safford Unified School District #1 v.
26 Redding, 129 S. Ct. 2633 (2009), and the Ninth Circuit's decisions
27 in Byrd v. Maricopa County Sheriff's Department, 629 F.3d 1135,
28 1138, 1145 (9th Cir. 2011) and Edgerly v. City and County of San

1 Francisco, 599 F.3d 946, 958 (9th Cir. 2010). However, in these
2 cases the searched individuals were required to expose their
3 genitalia or private parts. In Safford, the plaintiff "pulled
4 out" her underwear, such that the private areas of her body were
5 exposed to the persons conducting the search. 129 S. Ct. at
6 2641.² In Edgerly, the searching officers opened the plaintiff's
7 underwear to inspect his private areas visually. 599 F.3d at
8 958.³ Finally, in Byrd, the searched individual was allowed to
9 keep his underwear on, but was subjected to a tactile inspection
10 by a cadet who "touched [the plaintiff's] inner and outer thighs,
11 buttocks, and genital area with her latex-gloved hand through very
12 thin boxer shorts," "ran her hand up to separate the cheeks while

13 _____
14 ² In Safford the plaintiff was directed "to remove her
15 clothes down to her underwear, and then 'pull out' her bra and the
16 elastic band on her underpants." Id. The Court stated that the
17 "exact label" for the intrusion was "not important, though strip
18 search is a fair way to speak of it." Id. The Court explained,

19 The very fact of [the plaintiff's] pulling her
20 underwear away from her body in the presence of the
21 two officials who were able to see her necessarily
22 exposed her breasts and pelvic area to some degree,
23 and both subjective and reasonable societal
24 expectations of personal privacy support the treatment
25 of such a search as categorically distinct, requiring
26 distinct elements of justification . . . for going
27 beyond a search of outer clothing and belongings.

28 Id.

³ In Edgerly, the evidence indicated that the searching
official required the plaintiff to pull his pants down to his
ankles, and then "placed his finger within [the plaintiff's]
boxers and 'kind of just looked around.'" Id. (quoting the
plaintiff's testimony). The court found a reasonable inference
that the official "visually inspected [the plaintiff's] buttocks
or genitalia, which would amount to a strip search" under Ninth
Circuit precedent. Id.

1 applying slight pressure, to search for contraband inside his
2 anus," and "moved his penis and scrotum in the process of
3 conducting the search." 629 F.3d at 1137, 1142.

4 Plaintiffs have not provided any indication that the
5 officials in the present action subjected Mr. Jaegel, Jr., who
6 remained clothed in his underwear, to a tactile search of his
7 genitalia or buttocks, that they pulled out Mr. Jaegel, Jr.'s
8 underwear to allow a visual inspection of such areas, or that they
9 required him to move his underwear, exposing those areas to the
10 searching officials. There is no indication that Defendants
11 conducted anything other than a visual inspection of Mr. Jaegel,
12 Jr. after he was asked to strip to his undershorts. Amendment to
13 the class definition is warranted to clarify the type of search
14 that a class member must have experienced.

15 Plaintiffs propose in their opposition brief to modify the
16 class definition to clarify that it includes individuals who were
17 strip searched in the past. Specifically, Plaintiffs propose that
18 the first sentence of the class definition state, in relevant
19 part, "All pre-arraignment detainees who are, will be or have been
20 processed (booked) into Defendants' custody and who, because of
21 such booking processing, have been or will be strip searched
22 pursuant to Alameda County Sheriff's Department custom, policy or
23 procedure . . ." Defendants do not oppose this modification, but
24 request that it contain a limiting date of January 20, 2007, based
25 on the two year statute of limitations for the claim. Canatella
26 v. Van De Kamp, 486 F.3d 1128, 1132 (9th Cir. 2007) (stating that
27 the forum state's statute of limitations for personal injury
28 actions governs § 1983 claims and California Code of Civil

1 Procedure section 335.1 establishes a two-year limitations period
2 for personal injury actions).

3 Defendants' motion to amend the class definition is granted
4 in part. The Court amends the class definition to state,

5 All pre-arraignment detainees who have been, after
6 January 20, 2007, are, or will be held in Defendants'
7 custody and who, because of such detention, were,
8 after January 20, 2007, or will be, strip searched in
9 a manner requiring that they remove all of their
10 clothing or expose their genitals, buttocks or, in the
11 case of female detainees, breasts, for visual
12 inspection by the person(s) conducting the search,
13 pursuant to Alameda County Sheriff's Department
14 custom, policy or procedure without a reasonable
15 suspicion based on specific and articulable facts that
16 the detainee possessed a weapon or contraband that
17 would be found as a result of the strip search. To
18 qualify as a member of the class, the detainee must
19 have undergone or undergo the strip search, as
20 described above, as part of the jail's routine booking
21 process and while in the booking/intake area of the
22 jail.

23 As set forth in this Court's June 3, 2011 order, the
24 parties shall appear for a case management conference on
25 January 26, 2012.

26 IT IS SO ORDERED.

27 Dated: 1/17/2012

28 

CLAUDIA WILKEN
United States District Judge